COURT NO. 2

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) 6517/2001
(Old No. 8300/2000)

Ashok Kumar Singh (Ex. T. No. 31092),
S/o Sri A.P. Singh,
R/o Village Malahath,
P.O. Dabathuna,
District Varanasi.

.....Petitioner

Versus

1. The Executive Director,
   (Dept. head Business Group
   and Corporate Office),
   H.M.T. Ltd.
   Watch Division, Bangalore.
2. Assistant General Manager (Production),
   H.M.T. Ltd.,
   Nainital.
3. M/s H.M.T. Ltd.,
   Ranibag, Nainital.

.....Respondents

Sri Sudhir Singh, learned Counsel for the petitioner.
Sri V.K. Bisht, learned Counsel for the respondents.

13th December, 2007

Hon'ble P.C. Verma, J.

Heard learned Counsel for the petitioner on the delay condonation application and restoration application, which are duly supported by affidavits. I am satisfied with the reasons stated in the affidavit filed in support of delay condonation application. Accordingly, the application is allowed and delay in filing the present restoration application is condoned. Reasons stated in the affidavit filed in support of the restoration application are satisfactory to allow the application. Accordingly, the restoration application is allowed and order dated

29.10.2007 passed by this Court is recalled. The petition is restored to its original number.

2. I have heard learned Counsel for the parties on the writ petition and perused the record.

3. By means of this writ petition, the petitioner has sought direction to quash the chargesheet dated 20.5.1989 & 21.11.1989 and has further prayed for a writ of Mandamus commanding the respondents to treat the petitioner in their employment along with other consequential benefits.

4. Petitioner was appointed as a Technician Trainee in the respondent company. He was chargesheeted and enquiry was conducted and dismissal order has been passed. The petition has been pressed firstly on the ground that the copy of the enquiry report was not supplied to him. Therefore, the punishment order is liable to be set aside in view of the law laid down in the case of *Union of India v. Mohd. Ramzan Khan* reported in **(1991) 1 SCC 588.** In this case the Hon'ble Apex Court laid down a law that the non-supply of enquiry report affects the right of proper appeal against the punishment order. Therefore, before passing of the punishment order copy of the enquiry report should be supplied. This judgment on reference was again considered by the Constitution Bench and the Constitution Bench in *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.* reported in **(1993) 4 SCC 727,** laid down that even if enquiry report has not been supplied, the petitioner has to establish that non-supply of the copy of the enquiry report has caused prejudice to the

petitioner. In the present case, the petitioner has filed the appeal and the appellate authority has considered the entire case of the petitioner and affirmed the dismissal order. In the writ petition there is no averment of the petitioner that he could not make a proper appeal before the appellate authority for want of enquiry report. Thus, in view of the law laid down by the Apex Court in Managing Director, *ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (supra),* the first argument of the petitioner fails and is accordingly rejected.

4. The second ground of the petitioner is that the charge against him was that the petitioner was on Half Pay Leave (HPL) and he received the salary of full day in that month. The petitioner submitted that the attendance register is kept with the higher authority, who ticks the presence of the employees and according to the attendance register payment is made. Therefore, as regards receiving full salary for the day on which he was on HPL, in my view, for that payment the petitioner cannot be held guilty as there was no role played by the petitioner in making the tick on the register and in making the payment.

5. So far as another charge that the petitioner submitted the photocopy of the medical bill of Rs. 20/- for reimbursement is concerned, the objections were raised on the photostat copy of the bill and the original thereof was asked. Petitioner submitted that he will supply the original. But the reimbursement was not made to the petitioner and that was treated to be a misconduct and petitioner was chargesheeted.

6. Considering the nature of charges, I feel that the punishment is too harsh and shocking in nature. Therefore, I direct the disciplinary authority to reconsider the award of punishment of dismissal looking to the nature of misconduct alleged in the chargesheet. The disciplinary/punishing authority shall pass the appropriate order within a period of one month from the date of production of certified copy of this order.

7. With the abovementioned direction, the petition is disposed of. There shall be no order as to costs.

(P.C. Verma, J.)

Prabodh